

FILED

SEP 09 2009

PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

THOMAS JOSEPH ROEBER,)	CV 07-61-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DANIEL TROUPE, DR. RANZ, DR.)	
KOHUT, MIKE FERRITER, and)	
THERESA SCHNEE,)	
)	
Defendants.)	
)	

Plaintiff Roeber has filed an Amended Complaint under 42 U.S.C. § 1983 alleging that Defendants violated his Eighth Amendment rights by showing deliberate indifference to Plaintiff's knee injury. Defendants Rantz, Kohut, and Ferriter filed a motion for summary judgment in which they argue that they are

entitled to qualified immunity.

United States Magistrate Judge Keith Strong issued Findings and Recommendations on June 15, 2009, in which he concludes that the Defendants are entitled to qualified immunity. Judge Strong found that the Defendants had not been deliberately indifferent to the Plaintiff's medical needs and therefore the facts do not show a violation of a constitutional right. In the absence of facts showing Plaintiff's Eighth Amendment rights were violated, Judge Strong determined that Defendants Rantz, Kohut, and Ferriter are entitled to qualified immunity.

Plaintiff Roeber did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 35) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the motion for summary judgment by Defendants Rantz, Kohut, and Ferriter (Doc. No. 31) is GRANTED, and they are DISMISSED from this case.

The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Fed. R. App. P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.

DATED this 8 day of September, 2009.


Donald W. Molloy, District Judge
United States District Court

